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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,034	01/30/2004	Kameswari S. Konduri	KSKO-25,661	7598

7590 11/12/2009

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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 11/12/2009

Please find below and/or attached an Office communication concerning this application or proceeding.

<i>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</i>	Application No. 10/769,034	Applicant(s) KONDURI ET AL.	
	Examiner KEVIN K. HILL	Art Unit 1633	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 03 August 2009 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

Issue 1:

Under Section (6) Grounds of Rejection to be Reviewed on Appeal, Appellant asks if the spelling and hyphenation are correct. However, Appellant does not present the rejection to which the question refers. If Appellant is referring to the objection to the specification, pages 3-4 Office Action mailed March 1, 2007, then Appellant is respectfully reminded that an objection to the specification is subject to petition, not appeal. If Appellant is referring to a rejection, then Appellant's statements should be presented under Section (7) Argument in response to the corresponding rejected claims.

Issue 2:

Under Section (6) Grounds of Rejection to be Reviewed on Appeal, Appellant asks whether the double patenting rejection based on U.S. application 11/442,907 is proper. However, as discussed in the prior Notice of Defective Appeal Brief, paper mailed June 25, 2009, the rejection of Claims 1, 9-10, 12-13, 16-18, 34, 37-38, 41-42, 44-45 and 48-49 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3-4, 12, 16-18, 35, 38-39, 42-43, 45-46, 49-50, 53 and 55-56 of copending Application No. 11/442,907 is moot in light of Applicant's abandonment of Application 11/442,907, confirmed by telephone conversation with Applicant's representative Lindsey Scott on May 26, 2009. Thus, continued presentation of the double patenting rejection rendered moot in the Appeal Brief does not simplify matters for Appeal because it may cause confusion.

Issue 3:

Under Section (6) Grounds of Rejection to be Reviewed on Appeal, Claims 34-38, 41-45 and 48-49 have been rejected under 35 U.S.C. 112, first paragraph, enablement.

To simplify matters for appeal, the Examiner withdraws the rejection, in light of the art-recognized ability to formulate liposomes

Continuation Sheet (Patents and Trademark-462)

/Joseph T. Woitach/
Supervisory Patent Examiner, Art Unit 1633

/Kevin K. Hill/
Examiner, Art Unit 1633

Application No 08/112,233

U.S. Patent and Trademark Office
PTOL-462 (Rev. 7-05)

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)

Part of Paper No.